

REPUBLIC OF NAMIBIA



**HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION
HELD AT OSHAKATI**

REVIEW JUDGMENT

Case no: CR 16/2018

In the matter between:

THE STATE

v

KONDJAMBA JOHANNES

ACCUSED

(HIGH COURT NLD REVIEW CASE REF NO: 204/2017)

Neutral citation: *S v Johannes* (CR 16/2018) [2018] NAHCNLD 33 (12 April 2018)

Coram: TOMMASI J and CHEDA J

Delivered: 12 April 2018

Flynote: Convictions — Duplication — What constitutes — Two separate acts committed namely assault on a police officer and damaging his uniform in the process — One criminal transaction — Single intent of assaulting a police officer — Duplication of charges — Conviction and sentence on malicious damage to property charge set aside.

ORDER

1. The conviction and sentence in respect of count 1 are confirmed;
 2. The conviction and sentence in respect of count 3, malicious damage to property are set aside
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REVIEW JUDGMENT

TOMMASI J (CHEDA J concurring):

[1] This matter came before me on automatic review. The matter was submitted to me in chambers for review on 27 June 2017. The proceedings herein are clearly wrong and a further delay herein will be prejudicial to the accused. In view hereof I did not obtain a statement from the magistrate.

[2] The accused herein was charged with three counts namely assault on a member of the Police force in contravention of section 35(1) of the Police Act, 1990 (Act 19 of 1990) alternatively interference with a police officer in contravention of section 35(2)(a) of the same act, assault by threat and malicious damage to property. Count 1 arises from an assault of a police officer by the accused who was an inmate at the police cells. Count 2 relate to a threat made to the same police officer and count 3 relates to the accused having torn the uniform of the same police officer.

[3] The accused pleaded not guilty and denied that he assaulted or threatened or tore the uniform of the police officer.

[4] The State called the police officer in question. He testified that he opened the cell where the accused was held and the accused jumped on him, held him by his uniform trying to pull him into the cell and punched him on the left side of his forehead with his fist. In the process the accused tore his shirt on the chest and all the buttons fell off. The accused also threatened to kill him upon his release from custody.

[5] The learned magistrate convicted the accused of the main count of assault on a member of the Police force in contravention of section 35(1) of the Police Act, 1990 (Act 19 of 1990) and malicious damage to property. He was found not guilty and discharged on count 2, assault by threat. The conviction of assault and the sentence of 12 months' imprisonment are in accordance with justice and may be confirmed.

[6] The conviction in respect of malicious damage to property is however not in accordance with justice. The learned magistrate, in her judgment stated as follows:

'At first glance this may seem to be a repetition of count 1 for the same act appears to have been used (sic). I however do not argue this because count 1 accused assaulted State witness 1 on the face whilst on Count 3 accused allegedly tore the shirt from the witness. These are thus 2 different acts and no duplication. (sic).'

[7] In *S v Kharuchab* 2017 (1) NR 116 (HC) this court sets out the law in respect of duplication of convictions and I need not restate same in this judgment, save to cite the following extract from the headnote in *S v Gaseb & others* 2001 (1) SACR 438 where that court held that:

'...there were usually two tests applied in deciding whether there had been a duplication of convictions, namely the single intent test or the same evidence test: in deciding which test to apply the court must apply common sense and fair play'.

[8] It is evident that the accused had the single intent to assault the police officer and he grabbed him by his uniform so that he may assault him with his fists. The learned magistrate clearly erred in convicting the accused on both counts as same amounts to an improper duplication of convictions.

[9] In the result the following order is made:

1. The conviction and sentence in respect of count 1 are confirmed;
2. The conviction and sentence in respect of count 3, malicious damage to property are set aside.

M A Tommasi
Judge

I agree

M Cheda
Judge